

# The Five Types of Legal Argument

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THIRD EDITION

Wilson Huhn

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*for*  
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## Preface

This book was written for students entering law school, so that from the first day they might appreciate what makes legal reasoning so fascinating and so difficult. I have presumed that the reader has a general knowledge of the American system of government and court system. I have used a sprinkling of specialized terms that are either defined in the text or that may be clarified by reference to a legal dictionary. It is my hope that this volume will also prove useful to attorneys and judges who may wish to consciously reflect upon the analytical skills that have become second nature to them.

This book is principally based on the article *Teaching Legal Analysis Using a Pluralistic Model of Law*, published at 36 GONZAGA LAW REVIEW 433 (2000/01) (copyright © 2001 Gonzaga Law Review Association). It also contains substantial material from *The Use and Limits of Syllogistic Reasoning in Briefing Cases*, 42 SANTA CLARA LAW REVIEW 101 (2002). The editors of the Gonzaga Law Review and the Santa Clara Law Review made important contributions that improved the clarity and the accuracy of this work.

I would like to thank my editor, Melissa Ulrich, Assistant Professor and Lead Faculty, Paralegal Studies, at The University of Akron for her many improvements to the text. I am also grateful to Judge Sam Bell and to several of my colleagues at The University of Akron School of Law, including Dean Richard L. Aynes, Associate Deans Elizabeth Reilly and Malina Coleman, and Professors Jane Moriarty, Samuel Oddi, Richard Cohen, Tracy Thomas, William Jordan, and Lloyd Anderson, for their valuable substantive and editorial suggestions. Finally, I would like to thank my research assistants, Matthew Hudson and Patrick Walsh, for their invaluable



able assistance. All errors and material omissions are, of course, my sole responsibility.

Above all, I am indebted to my wife and children for their love and support, and I dedicate this book to them.

Wilson Huhn

## Preface to the Second Edition

Among other changes, this edition of *The Five Types of Legal Argument* adds a new chapter, Chapter 23, setting forth a logical demonstration of the theory of the five types of legal arguments. This chapter demonstrates that the “brief” of a case takes the form of an argument of deductive logic, but that the different types of legal arguments are not the creatures of logic, but rather are the assumptions upon which all legal reasoning is based. This new chapter is based upon research originally published in the article *The Use and Limits of Syllogistic Reasoning in Briefing Cases*, 42 SANTA CLARA LAW REVIEW 813 (2002). I again wish to acknowledge the fine work of the editors and staff of the Santa Clara Law Review for their assistance in bringing that article to publication.

The most significant substantive change to the theory is contained in Chapter 10 of this edition where I have added two additional types of “intra-type” attacks on legal arguments. The first change is that I have identified another method of attacking intent arguments, and it is exemplified in two speeches by Abraham Lincoln. In addition, I have described another way of attacking tradition arguments that was employed by Justice Anthony Kennedy in the case of *Lawrence v. Texas*.

This edition updates references to *Regents v. Bakke* and *Bowers v. Hardwick* in light of the 2003 decisions of the Supreme Court in *Grutter v. Bollinger* and *Lawrence v. Texas*. In particular, the newer cases make contributions to our understanding of how to make and attack arguments based upon precedent and tradition.

I am grateful to the many law students, law professors, lawyers, and judges who have found this book to be useful in their pursuit of a deeper understanding of and facility with legal reasoning, as

well as to those many persons who have made helpful suggestions for improving this book.

Wilson Huhn

## Preface to the Third Edition

The principal change that is made in the third edition of this book is the addition of a new chapter (now numbered Chapter 24) describing how reasoning by analogy is the bridge between formalism and realism. The material in this new chapter will assist lawyers and judges to construct legal arguments in increasingly difficult cases. This chapter is a condensed version of the jurisprudential theory set forth in the article *The Stages of Legal Reasoning: Formalism, Analogy, and Realism*, 48 VILLANOVA LAW REVIEW 305–380 (2003). I wish to acknowledge and thank the editors of the Villanova Law Review for their technical assistance and editorial advice that made many valuable improvements to that article, and hence to the new chapter of this book.

Other changes and clarifications are sprinkled throughout this new edition, yet the essential theme remains intact. Lawyers, judges, legal educators and law students construct legal arguments that follow certain patterns and that draw on characteristic types of data. These types of arguments may be classified under the categories of text, intent, precedent, tradition, and policy. This paradigm helps us both to understand the law and to practice the profession of law.

As always, I am grateful to my wife, Dr. Nancy Wollam-Huhn, for her love and support all these many years.

Wilson Huhn  
February 14, 2014 ♥